

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3111 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?No

NATHUBHAI MERAMAN DARJI

Versus

SPECIAL SECRETARY (APPEAL) & OTHERS

Appearance:

Shri Harin P. Raval, Advocate, for the Petitioner.

Kum. S.K.Mandavia, Advocate, for Respondents Nos. 1 and 2.

Shri A.G.Uraizee, Assistant Government Pleader, for Respondents Nos. 3 to 6.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 23/08/96

ORAL JUDGEMENT

The order passed by the Special Secretary (Appeals), Revenue Department at Ahmedabad (respondent No.1 herein) on behalf of the State Government on 12th March 1993 (communicated on 23rd March 1993) is under challenge in this petition under Article 226 of the Constitution of India. By his impugned order, respondent No.1 set aside the order passed by the Collector of Junagadh (respondent No.2 herein) on 16th January 1992 setting aside the order passed by the Assistant Collector at Veraval (respondent No.3 herein) on 28th February 1991. By his aforesaid order passed by respondent No.3, entry No.387 in Village Form No.6 (popularly known as the Record of Rights) effected on 29th November 1971 and certified on 12th April 1972 with respect to one parcel of land bearing survey No.63 admeasuring 4 acres 21 gunthas situated at village Rampara taluka Veraval (the disputed land for convenience) was set aside.

2. The facts giving rise to this petition move in a narrow compass. The disputed land originally belonged to one Koli Arjan Desa Mer (the deceased for convenience). Respondent No.5 claims to be his grandson. The deceased appears to have sold the disputed land to the petitioner by a registered document executed some time on 16th September 1970. Thereupon, the necessary mutation was effected in the record of rights with respect to the disputed land on 29th November 1971 by means of entry No.387. It was duly certified on 12th April 1972. Its copy is at Annexure-A to this petition. It appears that respondent No.5 moved respondent No.3 for taking the entry at Annexure-A to this petition in revision and for setting it aside. By the order passed on 28th February 1991, respondent No.3 set aside the entry at Annexure-A to this petition and remanded the matter to the Mamlatdar at Veraval (respondent No.4 herein) for deciding the matter afresh according to law. Its copy is at Annexure-B to this petition. The aggrieved petitioner carried the matter in further revision before respondent No.2 under Rule 108 (6) of the Gujarat Land Revenue Rules, 1972 (the Rules for brief) framed under the relevant provisions contained in the Bombay Land Revenue Code, 1879 (the Code for brief). A copy of the memo of revision styled as Memo of Appeal is at Annexure-C to this petition. By the order passed on 16th January 1992 in the aforesaid revisional proceeding, respondent No.2 accepted the petitioner's revisional application and set aside the order at Annexure-B to this petition. Its copy is at Annexure-D to this petition. That aggrieved

respondent No.5 herein. He carried the matter in further revision before respondent No.1. By his order passed on 12th March 1993 but communicated on 23rd March 1993, respondent No.1 accepted the revisional application of respondent No.5 and set aside the order at Annexure-D to this petition. Its copy is at Annexure-F to this petition. That aggrieved the present petitioner. He has thereupon approached this court by means of this petition under Article 226 of the Constitution of India for questioning its correctness.

3. Respondent No.3 set aside the entry at Annexure-A to this petition on the ground that no notice under Section 135-D of the Code was given to the deceased before effecting the mutation in the record of rights. Respondent No.1 has affirmed that conclusion reached by respondent No.3. Respondent No.1 has further found that the petitioner was not an agriculturist at the relevant time and the sale transaction in favour of the petitioner was hit by Section 54 of the Saurashtra Gharkhed, Tenancy Settlement and Agricultural Laws Ordinance Act, 1949 (the Ordinance for brief).

4. So far as the finding that the petitioner was not an agriculturist is concerned, the plea in that regard appears to have been taken for the first time in revision before respondent No.1. It was taken neither before respondent No.3 nor respondent No.2 as transpiring from their respective orders at Annexures-B and D to this petition. Whether or not the petitioner was an agriculturist was a question of fact. The plea in that regard could not have been taken for the first time in revision before respondent No.1.

5. Even otherwise, the sale in favour of a non-agriculturist is hit by Section 54 of the Ordinance. Whether or not the sale transaction between the parties was in contravention of the aforesaid statutory provision has to be decided in accordance with the provisions contained therein. It could not be decided in collateral proceedings popularly known as the RTS Proceedings.

6. I am supported in my view by the ruling of this court in the case of EVERGREEN APARTMENT CO-OPERATIVE HOUSING SOCIETY LTD. v. SPECIAL SECRETARY (APPEALS), REVENUE DEPARTMENT reported in 1991 (1) Gujarat Law Herald at page 155. In that case, a mutation entry was taken in revision under Rule 108 of the Rules on the ground that it was in contravention of the relevant provisions contained in the Urban Land (Ceiling and Regulation) Act, 1976. In that context, it has been

held:

"It is quite possible that an officer of the Revenue Department may be occupying different capacities under different enactments. That, however, would not empower him to exercise any powers under the enactment while proceeding under another enactment. So far as the proceedings under Rule 108 of the Rules, popularly known as the RTS proceedings, are concerned, it is well settled that the entries made in the revenue records have primarily a fiscal value and they do not create any title. Such mutations have to follow either the documents of title or the orders passed by competent authorities under special enactments. Independently the Revenue Authorities, as mentioned in Rule 108 of the Rules, cannot pass orders of cancelling the entries on an assumption that the transaction recorded in the entry are against the provisions of a particular enactment. Whether the transaction is valid or not has to be examined by the competent authority under the particular enactment by following the procedure prescribed therein and by giving an opportunity of hearing to the concerned parties likely to be affected by any order that may be passed."

Sitting as a single Judge, the aforesaid ruling of this court is binding to me. Even otherwise, I am in respectful agreement therewith. It is on all fours applicable in the present case.

7. There is another aspect in this case. It is not in dispute that respondent No.5 has filed Civil Suit No.244 of 1990 in the Civil Court at Veraval for challenging the legality of the sale deed executed by his grandfather in favour of the present petitioner. By his order at Annexure-D to this petition, respondent No.2 has clearly indicated that the decision of the Civil Court in the aforesaid suit proceeding will be binding to the parties. In that view of the matter, the interference with that order at Annexure-D to this petition passed by respondent No.2 herein was not called for in view of the ruling of this court in the case of RATILAL CHUNILAL SOLANKI v. SHANTILAL CHUNILAL SOLANKI reported in 1996 (2) 37 (2) Gujarat Law Reporter at page 525.

8. As pointed out hereinabove, respondent No.3 has set aside the entry at Annexure-A to this petition only on the ground that no notice under Section 135-D of the

Code was served to the deceased before effecting mutation in the revenue record on the basis of the registered sale transaction. In this connection, a reference deserves to be made to Section 135-C of the Code. It has been provided therein that any person acquiring interest inter alia by purchase of land has to report the sale transaction to the Village Accountant obviously for the purpose of effecting the necessary mutation in the revenue records. The Second Proviso thereto has exempted inter alia the purchaser from making such report to the Village Accountant if such transaction is represented by a registered document. It is an admitted position on record that the petitioner purchased the disputed land from the deceased by means of a registered sale deed. He was therefore not required to report that transaction to the Village Accountant. The Village Accountant was required to take note of that transaction on account of its registration according to the Indian Registration Act, 1908. In that case, the question of following the procedure of Section 135-D of the Code would not arise. When a transaction is represented by a registered document, its suo motu cognizance is required to be taken by the Village Accountant for the purpose of its mutation in the concerned revenue record. If that transaction is disputed, the disputing party will have to approach the competent civil court for annulling or avoiding such transaction as provided in Section 31 of the Specific Relief Act, 1963. It would not be open to him to dispute the validity of the transaction in what is popularly known as the RTS proceedings. I think respondent No.3 was not justified in setting aside the entry at Annexure-A to this petition on the ground that the required notice under Section 135-D of the Code was not served to the deceased. I am of the opinion that the deceased was not required to be served with the notice under the said statutory provision.

9. As rightly submitted by learned Advocate Shri Raval for the petitioner, respondent No.3 had no jurisdiction to decide the matter by his order at Annexure-B to this petition in view of the ruling of this court in the case of KALPATARU LAND DEVELOPMENT PVT. LTD. v. ASSISTANT COLLECTOR, SURAT reported in 1996 (2) 37 (2) Gujarat Law Reporter at page 600. It has been held therein that the powers under Rule 108 (6) of the Rules are exercisable by the State Government and not by any inferior officer like the Assistant Collector or the Deputy Collector. The aforesaid ruling of this court is in all fours applicable in the present case. It is obvious that the order at Annexure-B to this petition was passed by respondent No.3 in his capacity as the

Assistant Collector in exercise of revisional jurisdiction under Rule 108 (6) of the rules. He could not have done so in view of the aforesaid ruling of this court in the case of KALPATARU LAND DEVELOPMENT PVT. LTD. (supra).

10. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure-F to this petition cannot be sustained in law. It has to be quashed and set aside. Since I am taking this view on merits of the matter, I have not chosen to examine the submission urged before me by learned Advocate Shri Raval for the petitioner that respondent No.3 could not have taken the entry at Annexure-A to this petition in revision after lapse of nearly 18 years from the date of its certification on 12th April 1972.

11. In the result, this petition is accepted. The order passed by the Special Secretary (Appeals), Revenue Department, Government of Gujarat at Ahmedabad on 12th March 1993 at Annexure-F to this petition is quashed and set aside. This judgment of mine shall not preclude the revenue authorities from giving effect to the judgment and the decree of the Civil Court in Civil Suit No.244 of 1990 pending in the court of the learned Civil Judge at Veraval. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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